Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 402(b)(1)(A)	)	CC Docket No. 96-187
of the Telecommunications Act of 1996	)	DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF McLEOD TELEMANAGEMENT, INC.

McLeod TeleManagement, Inc. ("McLeod"), by its undersigned counsel, hereby submits its reply comments on the Commission's *Notice of Proposed Rulemaking* ("*NPRM*") in the above-captioned proceeding (FCC 96-367, released Sept. 6, 1996).

I. Introduction and Summary

In adopting rules to implement Section 204(a)(3) of the Communications Act of 1934 (the "Act"), the Commission should recognize that the stated purpose of Congress in adopting that provision was to remove *procedural* barriers to LEC tariff filings, not to change the substantive standards of lawfulness for LEC tariffs or the remedies of customers when a tariff is found to be unlawful. The comments of the incumbent LECs in this docket might lead an unwary reader to believe that Congress had repealed Sections 201(b), 202(a), 204(a)(1) and (b), 205(a), and 206 through 209 of the Act, because these carriers seem to believe that tariff filing should be nothing but a formality. At last check, however, those provisions of the statute were still in effect.

The arguments of the incumbent LECs in this docket constitute severe overreaching by companies that seek to ignore a legal regime designed by Congress to prevent monopoly pricing. No one can seriously dispute that incumbent LECs as a class have the ability to exercise market

power today. Congress would not have adopted Section 251(c) of the Act, imposing specific and detailed interconnection, unbundling, and resale duties *exclusively* on incumbent LECs, if that were not the case. If, someday in the future, an incumbent LEC can demonstrate that market conditions have changed to the point that regulatory oversight of its pricing is no longer required, it can petition the Commission for forbearance pursuant to Section 10 of the Act. That day has not yet arrived, though, and the Commission should therefore reject LEC efforts to misconstrue the procedural simplification required by Section 204(a)(3) as removing substantive constraints on their pricing or reducing the remedies for any violations of those constraints.

Instead, the Commission should adopt the proposals of numerous customers and competitors of the LECs to implement Section 204(a)(3) in a manner consistent with the statutory language, but while preserving meaningful opportunities for the public and the Commission to review LEC tariff filings. LECs should be required to provide same-day public notice of tariff transmittals, preferably including electronic notice and accessibility. Streamlined filing should be limited to the specific types of tariff filings identified in Section 204(a)(3); that is, increases and decreases in rates. Further, as urged in McLeod's initial comments, LECs should be required to disclose the legal basis for their tariff revisions, including any inconsistency with Commission rules or orders, and transmittals should be subject to summary rejection for incomplete or inaccurate disclosure.

II. The Adoption of "Streamlined" Tariff Filing Procedures Limits Neither Commission Review of the Substance of LEC Tariffs, Nor Customer Remedies

Although the legislative history of Section 204(a)(3) is not very detailed, it seems clear that Congress intended this provision to reduce regulatory delays and remove procedural obstacles to LEC tariff filings. *See, e.g.,* MCI at 5. There is nothing in either the statute itself or in the legislative

history expressing any intent of Congress to limit customers' remedies or to permit the filing of tariffs that violate the substantive requirements of Sections 201 and 202. *See, e.g.,* GSA at 4; Capital Cities/ABC *et al.* at ii.

The Commission should therefore reject any interpretation of "deemed lawful" that would limit customer remedies or limit the Commission's discretion, either before or after a tariff's effective date, to investigate the tariff's lawfulness under Sections 204 and 205. "Deemed lawful," as explained in McLeod's initial comments, should be construed as a presumption of lawfulness that can be overcome by a Commission determination following an investigation. Indeed, Section 204(a)(3) specifically refers to the Commission's authority to suspend and investigate a tariff pursuant to subsection 204(a)(1), so arguments seeking to limit the Commission's ability to conduct such investigations are contrary to express Congressional intent.

Furthermore, the Commission should reject the zealous efforts of some incumbent LECs to eliminate substantive rules governing their tariff filings. Bell Atlantic (at 3), for example, claims that the Commission's Part 69 waiver process violates the Act by delaying the effectiveness of LEC switched access tariffs, and therefore "**must** be eliminated." (Boldface in original.) If the requirement of a waiver is invalid, then the Part 69 rules themselves must also be invalid, and Bell Atlantic's argument therefore implies that the Commission has no authority to impose *any* rules governing LEC pricing of interstate services. Likewise, Southwestern Bell's arguments that the Commission should eliminate all cost support requirements (at 19) and should not permit public comment on streamlined tariff filings (at 17) imply that the Commission should cease being a regulator and should simply become a filing office for tariffs, like a registrar of deeds. While these

approaches may be attractive to monopolists that would like to exercise their market power without regulatory oversight, they are anathema to the express provisions and the evident purpose of the Communications Act, which is to restrain monopoly pricing and other abuses of market power.

III. The Commission Should Limit 15-Day and 7-Day Tariff Filings to Rate Increases and Decreases as Specifically Stated in the Statute

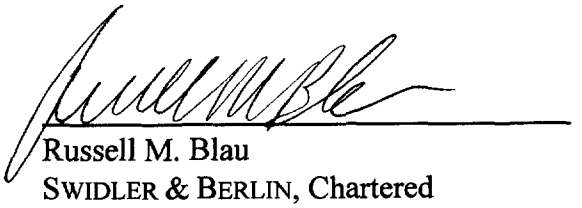
McLeod agrees with Ad Hoc Telecommunications Users Committee and MFS, who point out that the 7-day and 15-day notice periods required by Section 204(a)(3) are applicable *solely* to tariffs implementing rate decreases and rate increases, respectively. The Commission remains free to establish any notice period up to 120 days for any tariff containing new or changed regulations, terms, or conditions other than rate increases or decreases.

IV. The Commission Should Implement Electronic Filing and Same-day Access to Tariffs as Soon as Possible

Most parties commenting in this docket support the Commission's proposal to develop an electronic filing system for tariffs. McLeod urges the Commission to expedite this process to the extent possible, since electronic filing (and, equally important, immediate public access to documents in the electronic filing system) will be crucial if there is to be any meaningful public review of tariffs before they take effect. In its initial comments, McLeod also proposed that the Commission require that LEC tariffs be filed by noon on the day on which the notice period begins; the Ad Hoc Committee made a similar proposal with a 10:00 a.m. deadline. McLeod urges the Commission to consider these along with any and all other proposals that would expedite public access to tariffs and facilitate public comment during the streamlined notice periods.

WHEREFORE, McLeod respectfully urges the Commission to adopt rules that are consistent with the foregoing comments.

Respectfully submitted,



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I hereby certify that on this 24th day of October 1996, copies of Reply Comments of McLeod Telemanagement, Inc. were served by first class mail, postage prepaid, on the following:

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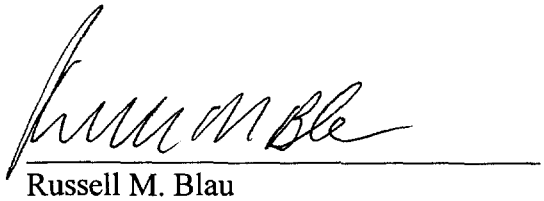

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